

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

OAK VALLEY INVESTMENTS, L.P.,	:	
	:	
Plaintiff,	:	MEMORANDUM DECISION and
	:	ORDER DENYING MOTION FOR
vs.	:	ORDER TO SHOW CAUSE and
	:	ORDER MODIFYING PROTECTIVE
	:	ORDER
VAL E. SOUTHWICK, VESCOR CAPITAL	:	
CORP., VESCOR DEVELOPMENT, LLC,	:	
SHAWN H. MOORE, VESCOP CAPITAL,	:	
LLC, APEX HOLDING 1, LLC, APEX	:	Civil No. 2:06CV00737
HOLDING 2, LLC, APEX HOLDING 3, LLC,	:	
APEX HOLDING 4, LLC, APEX	:	District Judge Dee Benson
HOLDING 5, LLC, APEX HOLDING 6, LLC,	:	
and APEX HOLDING 23, LLC,	:	Magistrate Judge David Nuffer
	:	
Defendants and Third-Party	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
BRIAN Y. HORNE and DOES 1 through 10,	:	
	:	
Third-Party Defendants.	:	Consolidated With
	:	
JONATHAN H. HORNE, M.D., as Trustee for	:	Civil No. 2:06CV00742
Jonathan H. Horne, M.D., P.C. Retirement Plan	:	
Trust Fund,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
VAL E. SOUTHWICK, VESCOR CAPITAL	:	
CORP., VESCOR DEVELOPMENT, LLC,	:	
APEX MM, INC., SHAWN MOORE,	:	
VESCOP CAPITAL, LLC, and VEGAS	:	

VISTA 6, LLC,	:
	:
Defendants and Third-Party	:
Plaintiffs,	:
	:
vs.	:
	:
BRIAN Y. HORNE and DOES 1 through 10,	:
	:
Third-Party Defendants.	:

Third-party defendant, Brian Y. Horne filed a motion for an order to show cause¹ why Plaintiffs should not be held in contempt for violating the Protective Order² entered in this case. Brian Horne alleges that Plaintiffs violated the Protective Order when they introduced documents marked “confidential” into an NASD arbitration related to this case.³

Plaintiffs acknowledge that they “inadvertently introduced documents marked ‘confidential’ into the arbitration,”⁴ but took immediate action to cure the disclosure once it was brought to their attention.⁵ They day after counsel for Brian Horne gave notice of the problem, Plaintiffs withdrew the responsive pleading that contained the disclosures. A few days later, Plaintiffs sought, and obtained consent to use the confidential documents from the producing parties, Southwick and Vescor.

¹ Docket no. 185, filed June 11, 2007.

² Stipulated Protective Order, filed February 2, 2007.

³ NASD Arbitration No. 07-000-25.

⁴ Response to Third Party Defendant Brian Horne’s Motion for Order to Show Cause at 3, docket no. 193, filed June 14, 2007.

⁵ *Id.* at 4.

None of the documents in question were produced by Brian Horne. Under the terms of the Protective Order, only the producing party may designate the document as “CONFIDENTIAL.”⁶ Consequently, Brian Horne cannot claim that documents produced by another party are confidential as to him. Because Plaintiffs quickly cured the inadvertent disclosure of the confidential documents and received consent to use the documents from the parties that produced them, there is no reason to find Plaintiffs in contempt.

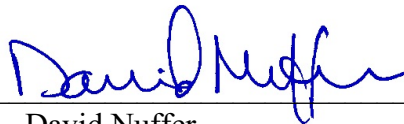
Plaintiffs also seek a court order authorizing Plaintiffs to use any and all documents designated as confidential in this proceeding, in the companion arbitration proceeding. The court has previously issued such an order for use in the associated bankruptcy proceeding,⁷ and sees no reason to deny the same request for the arbitration proceeding.

ORDER

IT IS HEREBY ORDERED that the Motion for Order to Show Cause⁸ is DENIED.

IT IS FURTHER ORDERED that the Protective Order entered in this case shall be and is hereby modified to allow plaintiffs to use any and all documents marked confidential in this proceeding, in the companion NASD Arbitration No. 07-000-25 proceeding.

DATED this 11th day of July, 2007.



David Nuffer
U.S. Magistrate Judge

⁶ Stipulated Protective Order at 2.

⁷ Order Granting Motion to Amend Protective Order, docket no. 199, filed July 2, 2007.

⁸ Docket 185.